

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BENJAMIN ROARK

§

v.

§

CIVIL ACTION NO. 5:12cv60

REGINA FLANERY, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANT MICHAEL PAPPAS

The Plaintiff Benjamin Roark, proceeding *pro se*, filed this lawsuit under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) complaining of alleged deprivations of his rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Court ordered that process be served upon the Defendants, but the service of process upon the defendant Dr. Michael Pappas was returned unexecuted because the address provided was no longer valid and the forwarding address had expired. The Court gave Roark time to provide another address for Dr. Pappas and Roark did so, but service upon the new address was again returned unexecuted.

After over 120 days had elapsed following the return of the second service, the Magistrate Judge issued a Report recommending that Dr. Pappas be dismissed from the lawsuit without prejudice, with the statute of limitations tolled for sixty days following the entry of final judgment in the case. Roark received a copy of the Magistrate Judge's Report but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the

unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 107) is hereby **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claim against the Defendant Dr. Michael Pappas is hereby **DISMISSED** without prejudice for failure to effect service of process. Fed. R. Civ. P. 4(m). It is further

ORDERED that the statute of limitations on Roark's claim against Dr. Pappas is hereby **SUSPENDED** for a period of sixty days following entry of final judgment in the case. The suspension of this limitation period shall begin as of the date of the filing of the present lawsuit and have no effect upon any claim which was already barred by limitations at the time that the present lawsuit was filed. It is further

ORDERED that Dr. Pappas is hereby **DISMISSED** as a party to this lawsuit. The dismissal of Dr. Pappas shall have no effect upon the remainder of the Plaintiff's claims in this case.

It is SO ORDERED.

SIGNED this 1st day of July, 2014.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE